IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 479 of 2000.

Decided on : October 20, 2006.

Hans Raj **…..Appellant.**

VERSUS

Ishwar Chand **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Naresh Kumar Sood, Advocate.

For the Respondent : Mr. Anand Sharma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. A suit was filed by the respondent-plaintiff Ishwar Chand for partition and recovery of certain amount of money on account of use and occupation of the suit property and also for permanent prohibitory injunction against the appellant- defendant Hans Raj, pleading that there existed a shop in Chamba town, which was jointly owned and possessed by the parties and that the share of the plaintiff- respondent in that shop was 2/3rd while that of the appellant –defendant 1/3rd only, but the appellant- defendant had been using the shop to the exclusion of the plaintiff and therefore, he was liable to pay use and occupation charges to the extent of the share of the

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Whether the reporters of the local papers may be allowed to see the Judgment?

plaintiff and was also liable to be restrained from interfering in the right of the plaintiff- respondent to enjoy his share in the joint property.

3. Appellant- defendant contested the suit and pleaded that earlier the plaintiff- respondent and one Dina Nath were the joint owners and that the plaintiff-respondent had relinquished his 2/3rd share in favour of said Dina Nath and thereafter Dina Nath sold the entire shop to him and thus he was an exclusive owner of the shop. Trial Court returned the finding that the shop was joint of the parties and their shares were, as alleged by the appellant- respondent, in the plaint.

4. Appellant- defendant's plea that the plaintiff- respondent had relinquished his share in favour of Dina Nath and that thereafter Dina Nath sold the shop in its entirety to him was rejected. After recording the aforesaid finding, the trial court decreed the suit for possession of 2/3rd share in favour of the respondent- plaintiff and against the appellant- defendant. Appellant- defendant filed an appeal in the court of learned District Judge, which stands dismissed. Both the findings and the decree of the trial court have been affirmed.

5. The appeal was admitted by this court on the following substantial question of law:-

> Whether the impugned judgement is vitiated for non invocation of provisions of section 3 and section 6 of the Partition Act, 1893?

6. I have heard the learned counsel for the parties and gone through the record. As a matter of fact, from the pleadings of

the parties, question No. 2 on which the appeal was admitted, does not arise. Neither of the parties had alleged specifically or even by implication that the property, in question, if partitioned, would become useless for both the parties or that its value would be diminished or that either of the parties was interested in buying the share of the other or that either of the parties was interested in selling its share to the other. Also neither of the parties led evidence on these lines. Thus this question does not arise and need not be gone into.

7. For the foregoing reasons, the appeal is dismissed.

October 20, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**